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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 831

GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, TRUSTEES OF UNION COLLEGE IN THE TOWN OF SCHENECTADY, STATE OF NEW YORK, FRANK BAILEY, MARIE LOUISE BAILEY, MARIE LOUISE BAILEY AND FRANK BAILEY AS TRUSTEES, JOHN VANNECK AND PAUL C. MORAN AS TRUSTEES AND EQUITABLE HOLDING CORPORATION, PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION

No. 832

SAME

v.

STANDARD GAS AND ELECTRIC COMPANY AND SECURITIES AND EXCHANGE COMMISSION

No. 833

SAME

v.

STANDARD GAS AND ELECTRIC COMPANY

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The findings and opinions of the Commission (R. 3–125), not yet officially reported, are set forth in the Commission's Holding Company Act releases Nos. 5070 and 5430. The opinion of the District Court (R. 129–143) is reported at 59 F. Supp. 274. The opinion of the Circuit Court of Appeals (R. 203–215) is reported at 151 F. 2d 326.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on September 14, 1945 (R. 215–217). By orders entered herein the time within which petitions for writs of certiorari might be filed was extended to February 11, 1946 (R. 221–222). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Does Section 11 (e) of the Public Utility Holding Company Act of 1935 permit a plan satisfying creditors' claims in equity securities of substantially equal value rather than in cash?

2. For the purposes of such a plan, may the claim upon outstanding holding company notes and debentures properly be determined as their face value and accrued interest, exclusive of the

amount of voluntary call premiums applicable thereto?

3. If the foregoing questions are answered in the affirmative, is Section 11 (e) unconstitutional as a taking of property without due process of law in violation of the Fifth Amendment or as an unwarranted exercise of the commerce power?

STATUTE INVOLVED

The applicable provisions of the Public Utility Holding Company Act of 1935 (hereinafter called the Act) are set forth in the Appendix, *infra*, p. 24, *et seq.*

STATEMENT

The order of the Circuit Court of Appeals sought to be reviewed reversed an order of the District Court refusing to enforce a plan of reorganization of Standard Gas and Electric Company ("Standard"), previously approved by the Commission, under Section 11 (e) of the Act. The plan provided *inter alia* for the elimination of Standard's notes and debentures through satisfaction thereof partly by cash and partly by shares of common stock in Standard's investment portfolio.

Standard is a public utility holding company registered as such under the Act (R. 29). It is a subsidiary of Standard Power & Light Company, also a registered holding company (R. 7, 105). Standard has numerous direct and indirect subsidiaries operating throughout the United States (see

chart, R. 117–120). Its principal subsidiaries consist of four operating companies and two registered holding companies, the latter having in turn many direct and indirect subsidiaries. The direct and indirect subsidiaries of Standard Gas have outstanding in the hands of the public mortgage bonds, unsecured indebtedness, and various classes and series of preferred stocks. Standard Gas itself has outstanding $59,000,000 of unsecured notes and debentures, two series of senior cumulative preferred stock, an issue of junior preferred stock, and common stock (R. 32, 92). Since 1934, no dividends have been paid on any of Standard's stocks (R. 6, 33). All of Standard's holdings are confined to common stock, some of which are of pyramided and intermediate holding companies and are characterized by substantial leverage.

To bring the sprawling Standard system within the requirements of Section 11 (b) (1), the Commission, prior to the submission of the plan involved in this proceeding, had entered an order directing Standard to divest itself of all its holdings except its interest in one specified subholding company.[1] The Commission has also found that Standard's system does not comply with Section 11 (b) (2) in that the distribution of Standard's voting power is grossly inequitable, Standard's structure is over-complicated, and

[1] *Standard Power & Light Corporation* and *Standard Gas & Electric Company*, 9 S. E. C. 862 (1941).

the Standard system violates the "great-grandfather" provision (the second sentence of Section 11 (b) (2)). The plan approved by the Commission herein was found by the Commission to be a step in compliance with its 11 (b) (1) order and also a step toward effectuating compliance with the provisions of Section 11 (b) (2) of the Act. (R. 90–93.) With specific reference to the notes and debentures, the Commission found that their elimination was required by Section 11 (b) (2) of the Act (R. 94).

The plan, which was approved by the Commission in November, 1944, would substitute a simple one-stock structure for the present complicated structure of Standard (R. 92). Standard's notes and debentures would be eliminated. These securities bear 6% interest and are due at varying dates between 1948 and 1966 (R. 32, 97). The plan provides that for each $1,000 of principal amount of Standard's notes and debentures there shall be paid $304.95 in cash[2] together with a specified number of shares of common stock of five operating companies (including Standard's four major operating company subsidiaries) in Standard's portfolio. These portfolio securities proposed to be distributed

[2] The cash required by the plan to be distributed to the debenture holders was to be provided in part out of Standard's treasury and in part out of three-year 3% bank loans (R. 37, 92).

were found by the Commission upon a detailed analysis of each security (R. 40–61) to have a value of approximately $690.[3]

The Commission found that the cash and portfolio securities provided in the plan were the fair equivalent of the claims of the debentures, and that the plan was fair and equitable to the holders of the debentures (R. 97).

Upon its approval of the plan, the Commission, at the request of Standard Gas, filed an application in the United States District Court for the District of Delaware for enforcement of the plan. In March 1945, after full hearing, the District Court, although accepting the Commission's valuation of the portfolio stocks, rejected the plan for the reason that it provides for satisfaction in portfolio stocks of a portion of the claims of the debentures. In all other respects the plan was found appropriate to effectuate Section 11 (b) and fair and equitable to the persons affected thereby (R. 129–150). The

[3] The stocks had been assigned in the plan a value of $690, subject to a provision that the value for the purposes of the plan would be raised or lowered in proportion to the average variation in the market prices of certain representative utility operating company stocks from August 15, 1944 to the date of the Commission's opinion (but not raised or lowered by more than 3%) (R. 35, 36). In fact the variation between those dates was only 7/10 of 1%, raising the value of of the stocks for purposes of the plan from $690 to $695.05, and reducing the cash provided in the plan from $310 to $304.95.

Circuit Court of Appeals for the Third Circuit reversed the order of the District Court in September, 1945, holding that the satisfaction of the notes and debentures in part by portfolio stocks was proper.

Petitioners, in referring to the proceedings subsequent to the mandate of the Circuit Court of Appeals, state that "It may be argued by the Commission * * * that this petition is moot" (Pet. 8). We do not take that position. We believe, however, that the proceedings subsequent to the mandate illustrate the difficulties created by drawn-out processes of litigation in the effectuation of a Section 11 (e) plan[4] and, as such, may be relevant to this Court's determination whether the writ of certiorari should be granted.

[4] For this reason the Commission opposed extension of the time to file a petition for a writ of certiorari herein.

Standard first filed an application for approval of a plan under Section 11(e) of the Act in March, 1943. Public hearings were held thereon for 32 days in the course of which a voluminous record was made, exploring in detail the assets and earning power of the companies in Standard's system. After briefs had been filed and oral arguments had been held, the Commission issued its findings and opinion in May, 1944, pointing out that the plan could not be approved and giving Standard time to file an amendment to accord with the views of the Commission expressed therein. (R. 3–17.) The present plan was filed in August, 1944 (with amendments filed in September and November, 1944) and public hearings were held thereon. (R. 29.) In November, 1944, the Commission approved the plan and filed a petition for its enforcement in the District Court. (R. 1, 126–128.)

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Most of these events are described in *In re Standard Gas and Electric Company* (D. Del.), Dec. 29, 1945, as follows:

> Since the receipt of the mandate, a Noteholder and owners of preferred and preference stocks have sought to intervene. The Noteholders, seeking the entry of the decree originally proposed, seek approval of the plan as fair and equitable and ask for enforcement. The stockholders contend that, since the original approval of the plan by the Securities and Exchange Commission in November, 1944, there has been a radical change of circumstances, i. e., the underlying stocks have greatly increased in value, and to permit the Noteholders to receive the package of stocks allotted to each of them, together with cash, would mean that each would receive substantially more than the face amount of his debt, plus premium plus interest.
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> A hearing was held on the stockholders' request for intervention. Before this matter was adjudicated, Standard requested the Commission to withdraw its application to this court for an order enforcing the plan. Alleging changed circumstances, Standard then filed a motion to have the plan declared unfair and inequitable and sought an order dismissing the application of the SEC for enforcement of the plan. Standard, in its supporting papers, states that it has a definite program for the prompt redemption of its Notes.

The Commission took the position, contrary to the contentions of Standard, that there had not been such a material change in circumstances as to warrant a re-examination of prior holdings as to the fairness and appropriateness of the plan. But the Commission also concluded that the proceedings on the plan had not progressed to the point where creditors' rights had been transmuted into a right to receive the cash and new securities called for by the plan, and that, accordingly, Standard remained free to discharge the creditors' claims in accordance with pre-existing contract rights and without availing itself of the reorganization provisions of the Act. The District Court accepted this latter recommendation of the Commission and remanded the case to the Commission so that Standard might be accorded the opportunity to effectuate the financial arrangements which might be necessary to call and retire the notes and debentures. The District Court has not found it necessary to decide whether by reason of alleged change of circumstances the plan should be held no longer "fair and equitable."

An appeal has been taken by certain debenture holders from the decree of the District Court remanding the case to the Commission. Upon application of Standard, the Commission has authorized Standard to issue $51,000,000 principal amount of 2½% bank loan notes to be used, together with treasury cash, for the call and retire-

ment of the notes and debentures. See *Standard Gas and Electric Company,* Holding Company Act Release No. 6435 (1946).

ARGUMENT

The questions presented arise out of a program for fulfillment of the requirements of Section 11 (b) of the Act by Standard. These and allied questions are recurring and therefore in that sense are important in the administration of the Act. But, it is submitted, there can be no serious doubt of the correctness of the decision of the court below upon the issues involved nor is there any conflict of decisions on these issues among the circuit courts of appeals. Under these circumstances there is no occasion for review by this Court.

1. *Power of the Commission to approve a plan providing for satisfaction of holding company notes and debentures by securities of underlying operating companies.*—Bringing about compliance with the standards of Section 11 (b) by existing holding company systems presents varying and complex problems, and Congress left to the Commission the determination of what "action" or "steps" should be taken in each situation. In the instant case the elimination of Standard Gas' notes and debentures is one such step found necessary by the Commission, and petitioners do not quarrel with this determination. Petitioners contend, however, that the notes and debentures

can be eliminated only by payment in cash according to the terms of their contract. The basis of petitioners' contention that the Commission has no power to authorize the satisfaction of their claims by securities of underlying operating companies in Standard Gas' portfolio is that Section 11 of the Act is not a true reorganization statute. The terms of Section 11 and its legislative history make clear the invalidity of petitioners' contention.

Under Section 11 (a) of the Act, the Commission makes an examination of each registered holding company system from the viewpoint of the effect on such system of the provisions of Section 11 (b). The Commission is directed to determine as soon as practicable what "action" or "steps" should be taken by each system to meet the standards of Section 11 (b). Failure to comply with a Section 11 (b) order results in recourse by the Commission to the courts under Section 11 (d). The district court is there given power to effect compliance by "disposition" of any or all of the assets of the company "in accordance with a fair and equitable *reorganization* plan which shall have been approved by the Commission * * *". (Italics supplied.) Similarly under Section 11 (e), every registered holding company is invited to file a fair and equitable "plan * * * for the divestment of control, securities, or other assets, or for other action * * *" to enable it to meet the standards

of Section 11 (b). Section 11 (f), which relates *inter alia* to court proceedings under Section 11 in case a trustee has been appointed as authorized in subsections 11 (d) and 11 (e), provides: "Notwithstanding any other provision of law" a "*reorganization* plan may be proposed" by the Commission or, subject to Commission rules, "by any person having a bona fide interest * * * in the *reorganization*" (italics supplied).

There can be no question that Congress deliberately used this reorganization terminology intending to create a reorganization statute. The Senate Committee on Interstate Commerce reported[8]

> Subsections (d), (e), and (f) outline the procedure whereby the reorganization plans must be approved by the Commission and carried out under the supervision of the Federal courts. * * * Subsection (e) expressly authorizes a holding company subject to the approval of the Commission and the court to work out a plan of reorganization to make unnecessary the issuance of an involuntary order for its reorganization by the Commission, and the Commission and the court are authorized to approve any plan so worked out voluntarily by a holding company as the Commission and the court might order under their compulsory powers. * * *

That these plans of reorganization might provide for distribution of portfolio securities to existing

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[8] S. Rep. No. 621, 74th Cong., 1st sess., p. 33.

holding company security holders was also spelled out by the Senate Committee:[6]

> * * * the title does not require the dumping or forced liquidation of securities. Such disposition as may be necessary can be accomplished by reorganization which will equitably redistribute securities among existing security holders.

Where Congress in the public interest has authorized a reorganization, the contract rights of a security holder may not block enforcement of the "overriding public policy." Cf. *Otis & Co.* v. *Securities & Exchange Commission,* 323 U. S. 624, 637; and see *Continental Insurance Co.* v. *United States,* 259 U. S. 156.[7] The claims of security holders in a reorganization are satisfied

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[6] *Id.* at p. 16. Although the bill reported out by the Senate differs somewhat from the Act as ultimately passed, the latter, as demonstrated by the court below, enlarged rather than restricted the Commission's available remedies (R. 207).

For further legislative history clearly indicating that distribution of portfolio securities was intended see *id.* pp. 13, 32, 33, 34, 35; see footnote 8, *infra;* and see H. Rep. No. 1318, 74th Cong., 1st sess. pp. 49–50; and 79 Cong. Rec. 10361.

[7] This case was cited by Congressman Eicher in his Additional Views contained in the Report of the House Committee on Interstate and Foreign Commerce (H. Rep. No. 1318, 74th Cong., 1st sess., pp. 49–50) in reply to the "allegation that the Senate bill will cut off valuable equities by the forced liquidation of assets and the dumping of securities upon a demoralized market * * *" to show that under the anti-trust laws the contract rights of creditors may be altered.

if the security holders receive in order of their priority the "equitable equivalent of the rights surrendered". *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U. S. 523, 565; *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510, 529–30; *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448, 482; *Kansas City Ry.* v. *Cent. Union Tr. Co.*, 271 U. S. 445, 455. This consideration applies with equal force to the contract rights of preferred stockholders and to those of creditors. *Otis & Co.* v. *Securities and Exchange Commission, supra*, at p. 634.

In bankruptcy reorganizations no distinction is made in the application of this rule to the claims of bondholders and those of stockholders. Similarly, there is no valid ground for a distinction in its application to the claims of different types of security holders in a reorganization under Section 11 of the Holding Company Act. Petitioner's argument that creditors' rights in a solvent corporation cannot be varied ignores the fact that the Act, like the anti-trust acts, under which creditors' rights in solvent corporations are varied (see note 7, *supra*), is an exercise of the commerce power and not of the bankruptcy power of Congress. Nothing in Section 11 or its legislative history indicates any basis for the claimed distinction between the right of debt security

holders to observance of the terms of their contracts (see Pet. Br. p. 11) and the rights of other classes of security holders. Indeed, the studies which formed the basis for the Act made clear that holding company debt securities are often "only common stocks in disguise."[8] As the court below pointed out, Standard's debentures and preferred stocks are all based upon the common stocks of underlying operating companies. "This identity of origin renders caste distinctions of little significance here." (R. 209.)

2. *Fairness of the Plan.*—The Commission found that the securities and cash to be distributed to the holders of Standard's notes and debentures had a value equivalent to their claim.[9] Both courts below agreed with this finding.[10] In-

[8] Utility Corporations, S. Doc. No. 92, 70th Cong., 1st sess., Part 72–A, p. 154. See also id. at 357–358, and Hearings before House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st sess., p. 212.

[9] In fact, the portfolio securities were found to have a value sufficiently higher than the portion of debentures not satisfied by cash to compensate debenture holders in full, having in mind the fact that the debenture holder "will incur some expense if he wishes to convert his package of securities into cash and that any loading in value that the package may contain * * * may well be lost through the expense of converting the bundle into cash." (R. 96.)

[10] Although the District Court held that no plan could be fair which attempted to discharge the debenture claim by an allocation of assets, it agreed that if this were possible the amount of assets tendered by this plan is equal in value to the debenture holder's claim.

deed, petitioners do not complain that a fair valuation of the securities they are to receive plus the cash payment proposed under the plan is not equal to the face amount of their debentures plus interest. Their theory is that the plan is unfair in that it fails to compensate them for their alleged loss of senior position.[11]

Concededly, the rights of senior security holders are not satisfied in full merely because they receive junior securities of a "face amount" equivalent to their claims. *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U. S. 523. However, as this Court pointed out in *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510, 529, "whether in case of a solvent company the creditors should be made whole for the change in or loss of their seniority by an increased participation in assets, in earnings or in control, or in any combination thereof, will be dependent on the facts and requirements of each case."

In determining the value of the securities to be received in exchange for the bundle of rights given up, the Commission compared not only factors relating to the safety of the investment, but also such factors as the amount of income

[11] Petitioners also claim the plan is unfair in failing to include in their claim the call premium provided in the event of voluntary retirement of the debentures. This objection is discussed below.

that may be allocable to the securities to be exchanged. The record makes clear that under the plan petitioners will give up little of substance from the standpoint of the safety of their investment, and they will be in a position where they they might receive substantially enhanced earnings. Standard's notes and debentures are not gilt-edged investments. They are speculative securities, since all income applicable to them stems from the earnings of common stocks of the underlying operating companies in the system. The operating companies' common stocks which are to be used in part satisfaction of these debentures are, as the court below noted, "the cream off the milk in the Standard ice box". (R. 213).[12] The Commission found that the package of common stock to be received by each $1,000 note and debenture holder was "paying in the aggregate about $44 in dividends annually", was "currently earning approximately $59" and had "estimated future earnings of about $70" (R. 94). This must be contrasted with the 6% limitation upon the earnings of the notes and debentures, which amounts to less than $42 on the portion thereof not satisfied by cash.

[12] The percentage of gross income available for all stocks owned by Standard averages only 30%, whereas the weighted average percentage of gross income available for the common stocks proposed to be substituted for the notes and debentures is 35% (R. 43, 48, 53, 56, 60, 95).

Standard's notes and debentures are subject to the same kind of risk of declining earnings as are the common stocks to be received in exchange therefor. Whatever difference there may be in the degree of such risk is adequately counterbalanced by the greater quantum of present and prospective earnings applicable to these common stocks.

3. *The Call Premium.*—Petitioners contend that the extent of their compensation must include the amount of premium payable in the event their securities should voluntarily be called by Standard. The holdings of both courts below are contrary to this contention, and all other courts which have had occasion to consider the problem have uniformly held that a retirement of senior securities compelled by Section 11 does not call into play such voluntary redemption provisions as are here involved.[18] The Commission did not find that the investment quality of the notes and debentures entitled their holders to receive more than their face amount plus interest

[18] The circuit court decisions are: *New York Trust Co.* v. *Securities and Exchange Commission*, 131 F. 2d 274 (C. C. A. 2), certiorari denied, 318 U. S. 786, rehearing denied, 319 U. S. 781; *City National Bank and Trust Co.* v. *Securities and Exchange Commission*, 134 F. 2d 65 (C. C. A. 7); and *Massachusetts Mutual Life Insurance Co.* v. *Securities and Exchange Commission*, 151 F. 2d 424 (C. C. A. 8), petition for certiorari pending, No. 802, this Term.

(see R. 93–97), and petitioners do not contend that a finding to that effect should have been made.[14]

In the instant case the redemption of the debentures is necessary because the debentures constitute an undue and unnecessary complexity in the Standard Gas system, and because the debentures are a cause of the inequitable distribution of voting power. It does not result from any election by the company to avail itself of the indenture provision under which it may prepay at a premium. In view of the Commission's findings as to the quality of the notes and debentures, the fair and equitable standard is satisfied by payment of face amount now, as, under the circumstances, the equitable equivalent of future payment of interest and principal on the contract dates. See *Otis & Company* v. *Securities and Exchange Commission,* 323 U. S. 624, 638, in which the Court recognized the consistency of the result reached in that case with lower court decisions which had upheld similar prepayments of debt claims at their face amounts.

4. *Necessity and Appropriateness of the Plan.*— Petitioners' only basis for their contention that the plan is not necessary or appropriate is that a plan providing for payment of the claims of noteholders and debenture holders in cash might have been feasible.

[14] In that respect the case differs from *American Power & Light Company*, Holding Company Act Release No. 6176, discussed in our brief in opposition in *Massachusetts Mutual Life Ins. Co.* v. *Securities & Exchange Commission*, No. 802, this Term.

The fact that alternative plans might have been approved obviously cannot render this plan an unnecessary step toward compliance with Section 11 (b) since in that event no plan could ever be "necessary". The complex process of bringing the many holding company systems into conformity with Section 11 (b) has necessarily extended over a substantial period during which extrinsic circumstances, including the condition of the securities markets, have not remained static. It was clearly the intention of Congress that the Commission, as an administrative body specializing in the financial field, should exercise a large discretion in dealing with the practical problems presented by the particular needs of each holding company system in the financial setting prevailing at the time that task is undertaken.

Various considerations were involved in the Commission's determination to accept a plan settling the claims of Standard's security holders in kind rather than in cash. As we have seen, Standard's note and debenture holders have no present right to cash. There were involved such questions as the added expense to the security holders of an underwriting and of registration of the securities which would have to be sold in order to raise cash. Moreover, questions of public interest, such as the effect of the plan on the securities markets, were involved. As the court below pointed out (R. 212):

> * * * the wide grant of power given by Congress to the Commission carries with it the authority to the Commission to fix the form of reorganizations, subject to court control if the Commission departs from the law. We do not think that the district court or appellate court is to substitute its notion of practical expediency for that of the Commission.

5. *Constitutional Problems.*—As we understand petitioners' contentions as to constitutionality, they are (a) that the plan is so inequitable as to violate constitutional rights and (b) that modification of creditors' rights is beyond the reach of Congress under the commerce clause.

Petitioners apparently would not urge the first objection in opposition to what they considered a "fair and equitable plan". Hence the objection does not extend to "the constitutional validity of the section in its general scope and application".[15] *Continental Ill. N. B. & T. Co.* v. *C. R. I. & P. Ry Co.,* 294 U. S. 648, 667. If the plan is unfair it fails for contravention of the statutory standard; if fair, the alleged constitutional difficulty disappears.

[15] Such problems are currently before this Court in other cases. *North American Company* v. *Securities and Exchange Commission*, October Term, 1945, No. 1; *Securities and Exchange Commission* v. *Engineers Public Service Company* etc., October Term, 1945, Nos. 2 and 3; and *American Power and Light Company* v. *Securities and Exchange Commission*, etc., October Term, 1945, Nos. 6 and 7.

No valid reason is suggested in support of petitioners' second objection why the powers of Congress under the commerce clause should be less pervasive than under the bankruptcy clause.[16] In any event, as we have pointed out above, this Court has held in the cases under the anti-trust acts that creditors' rights may be varied in compliance with the public policy expressed in statutes based on the commerce power. See, *supra*, p. 13; *Otis & Co.* v. *Securities & Exchange Commission,* 323 U. S. 624, 634 n. 14. At least equal reasons exist for the exercise of a similar power in Public Utility Holding Act cases. The circumstances which may validly call for modification of creditors' rights are not limited by the Constitution to insolvency of the debtor.

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[16] Petitioners' reference to the "essential safeguards" in bankruptcy reorganization legislation, "such as the requirements of a right to a hearing and the vote of creditors of a class affected" (Pet. Br. p. 18), is irrelevant. Under Section 11 (e) the Commission can approve a plan only "after notice and opportunity for hearing", and petitioner here, in accordance with the Commission's Rules of Practice were accorded a hearing. So far as security holders' votes are concerned, Congress obviously did not wish to give any class of security holders the power to veto compliance with Section 11, and for this reason it followed the equity precedents under the anti-trust laws rather than precedents in bankruptcy reorganization statutes. It should be noted that the bankruptcy reorganization statutes themselves have provision whereby a vote may be dispensed with under certain circumstances. See the third paragraph of Section 77 (e) of the Bankruptcy Act (11 U. S. C. 205 (e)); and see Chapter X, subsections 216 (7) and (8) of that Act (11 U. S. C. 516 (7) and (8)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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